IN THE

Supreme Court of the United States

MICHAEL E. AVERY, ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Illinois selects the judges of its highest court through partisan elections. This case reached that court on October 2, 2002 after a $1.05 billion verdict against Respondent, State Farm Mutual Auto. Ins. Co., was unanimously upheld by the Illinois Appellate Court. The case was argued before and submitted to the Supreme Court of Illinois in May of 2003. Illinois then held a regularly scheduled judicial election in November 2004 for a vacant seat on the Supreme Court. The winner of this election, then-trial judge Lloyd Karmeier, directly received over $350,000 of donations from Respondent, Respondent's Lawyers, and Respondent's *Amicus* and their lawyers. Over $1 million in additional funds came indirectly from groups with which Respondent State Farm was affiliated and a member. After his election, Justice Karmeier declined to recuse himself from this matter, and then cast the decisive fourth vote overturning the verdict against State Farm.

May a judge who receives more than $1 million in direct and indirect campaign contributions from a party and its supporters, while that party's case is pending, cast the deciding vote in that party's favor, consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDINGS

Petitioners Michael Avery, Mark Covington, Sam DeFrank, Carly Vickers and Todd Shadle, were appointed to represent a certified Class of State Farm auto policyholders in 48 states. They were Plaintiffs-Appellees in the courts below. Respondent State Farm Mutual Auto Insurance Company was Defendant-Appellant in the courts below.

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OPINIONS BELOW

The decision reversing the Appellate Court of Illinois, Fifth District's opinion upholding the verdicts and judgments below (App., *infra*, 1-149) is reported at 216 Ill.2d 100, 835 N.E.2d 801 (2005). The Appellate Court's decision upholding in part the verdicts and judgments below (App. 150-203) is reported in part at 321 Ill.App.3d 269, 746 N.E.2d 1242 (5th Dist. 2001). The October 8, 1999 Judgments of the Circuit Court (App. 204-221) are unreported. The September 26, 2005 Order of the Supreme Court of Illinois denying rehearing (App. 222) is unreported. The May 20, 2005 Order of the Supreme Court of Illinois vacating its March 16, 2005 Order denying the motion by Petitioners for conditional non-participation as moot (App. 223-4) is unreported. The March 16, 2005 Order denying the motion by Petitioners for conditional non-participation (App. 225) is unreported.

JURISDICTION

The Supreme Court of Illinois entered its Order denying Petitioners' petition for rehearing on September 26, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides in pertinent part "nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

I. Proceedings in the Trial and Appellate Courts

The case below was brought as a class action in 1997 against respondent State Farm to challenge State Farm's nationwide policy of requiring the use of so called "imitation" or "non-original equipment manufacturer" ("non-OEM") crash parts to settle auto claims by its policyholders whenever those parts were available and cheaper than parts made by the vehicle's manufacturer.[1]

Petitioners filed in Marion, Illinois, the county seat of Williamson County, the county in which State Farm's regional offices were located. The assigned judge promptly disclosed to the parties under ABA Canon 3 that he had represented State Farm on numerous occasions within the preceding seven years. Both parties then waived the conflict under ABA Canon 3(D), adopted in Illinois as Ill. Sup. Ct. Rule 63(D).

After extensive briefing and a four-day evidentiary hearing, the trial court certified two claims — breach of contract and consumer fraud — on behalf of a Class of 4,762,000 State Farm policyholders in 48 states who had

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[1] This case involved only a specific list of 25 mass-produced "crash parts" such as outer body sheet metal parts (fenders and hoods) and outer body safety parts (taillight assemblies and bumper systems). These parts are commonly replaced after accidents and thus termed "crash parts." The case did not involve replacement of parts like batteries, oil filters and tires. As found below, "OEM parts" are made by or for the vehicle's original equipment manufacturer by approved suppliers according to the manufacturer's proprietary specifications. "Non-OEM parts" are made without these specifications by suppliers not approved by the OEM.

non-OEM crash parts used by State Farm to settle first-party comprehensive and collision claims. Petitioners contended that because these non-OEM crash parts were mass-produced without demonstrated compliance to the manufacturers' design, materials and measurement specifications, they were categorically not of "like kind and quality" to OEM crash parts, therefore could not restore vehicles to "pre-loss condition" as required by State Farm's policy language, and that State Farm's unauthorized use of them breached this uniform policy language. Petitioners further contended that State Farm had misrepresented and concealed the true quality of the non-OEM crash parts it used and therefore deceived its policyholders, whose policy premiums were paid pursuant to contracts requiring the use of "like kind and quality" parts.

After extensive pre-trial proceedings and full discovery, the trial court conducted a bifurcated seven week trial: the breach of contract claims were tried to a jury, and the statutory consumer fraud claim was determined by the court. At the conclusion of this trial, the jury found that State Farm breached its contracts by specifying the use of inferior non-OEM parts. After reviewing all of the evidence, the Trial Court agreed and issued a written Judgment on October 4, 1999, confirming a total award of $456,636,180 in breach of contract damages or less than $100 for each of the 4,762,000 class members. (App. 204-8) The Trial Court also found that State Farm had violated the Illinois Consumer Fraud Act ("ICFA"), and issued written findings supporting its conclusion. Specifically, it found that, in light of State Farm's knowledge of the inferiority of non-OEM crash parts, State Farm misrepresented, concealed, suppressed and omitted material facts concerning the non-OEM crash parts that it specified, and that as a direct and proximate result of these deceptions, Plaintiffs and the Class were injured and damaged. (App. 209-221)

The Trial Court awarded disgorgement damages of $130,000,000, which represented the amount State Farm had not paid on claims during the period within the statute of limitations for the ICFA claim (which was shorter than that for the breach of contract claim) as a result of its specification of cheaper non-OEM crash parts. The Trial Court recognized that the Class would receive only one award of this $130,000,000 as it overlapped with damages awarded by the jury on the breach of contract claim. Finding further that State Farm had willfully violated ICFA, the Trial Court applied controlling legal and equitable considerations, including State Farm's conduct, the "nature and enormity of the wrong," the resulting harm, the ability to pay, and potential liability in other cases and awarded punitive damages in the amount of $600,000,000 to the ICFA Class.

The record below contains more than 30,000 pages of pleadings and more than 13,000 pages of hearing and trial transcripts. The Appellate Court extended the page limitations for briefing to 150 so that State Farm would have an adequate opportunity to address the errors it claimed were prejudicial, and extended the time for oral argument. Although it found State Farm waived a number of the issues raised in its appeal, the Appellate Court, in a forty-page opinion issued on April 15, 2001, nevertheless addressed many of those issues on the merits. It did so "in the interest of thoroughly considering the issues raised in [the] appeal." (App. 160)

The Appellate Court's eventual opinion upheld the jury's verdict in all respects, disallowed the duplicative disgorgement of damages under ICFA awarded by the Trial Court, and upheld a $1.05 billion verdict for the Class.